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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,379	06/15/2005	Declan P Kelly	NL021444	4561
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EXAMINER				
KEEFE, MICHAEL E				
ART UNIT		PAPER NUMBER		
2454				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,379

Applicant(s)

KELLY, DECLAN P

Examiner

MICHAEL E. KEEFER

Art Unit

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the RCE filed 2/2/2009.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4-8, 10-18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Donian et al. (US 2004/0003398), hereafter Donian.

Regarding **claim 1**, Donian discloses:

A media reader, remote network interface, a controller, and playback means. (see figure 2, items 236, 232, 212, and 204 are all possible media readers, 240 and 242 are remote network interfaces, 560 is the controller, and 208, 224, and 560 are all possible 'playback means').

an application causing the controller to control playback of content from a medium when inserted in the media reader, the application causing the controller to access a service on the remote network via the interface in order to receive control commands, including advertising, from the services enabling the controller to control said playback means to play back the content on the

medium. ([0188]-[0196] discloses receiving control information from a remote server, [0201] discloses retrieving advertising information from a remote server)

Regarding **claim 2**, Donian discloses:

The media reader is an optical disc drive, magnetic disc drive, or a flash card interface. (see [0099])

Regarding **claim 4**, Donian discloses:

wherein the received control commands control at least one of the selection and order of content by the controller to be played back by the playback means. (see [0196] which discloses eliminating content from the play list, as well as the ratio of songs to content (i.e. the order of content))

Regarding **claim 5**, Donian discloses:

wherein said control commands cause the controller to playback the received advertisement prior to playback of content from the medium. ([0117] discloses forcing a user to watch ads prior to playing content)

Regarding **claim 6**, Donian discloses:

wherein selection of portions of content for playback is selectable by a user, the received control commands causing the controller to monitor content selection by the user and to transmit indicia of content selection via the interface to the service on the remote network. ([0188] discloses sending an ID of content to a sever based off of a user selection)

Regarding **claim 7**, Donian discloses:

wherein selection of portions of content for playback is controllable by the application controlling said controller, the controller monitoring indicia of user preferences with regard to currently playing content and to transmit indicia via the interface to the service on the remote network. (see [0200] which discloses sending user preference information to the server to determine ad content)

Regarding **claim 8**, Donian discloses:

wherein the indicia includes at least one of a level of content playback and a user provided indicia. (see [0200] which discloses sending user preference information to the server to determine ad content)

Regarding **claim 10**, Donian discloses:

wherein the received control commands and advertisements are configured to only enable playback of content for a predetermined time period. (see [0196] content is only allowed to be played for a certain amount of times before more ads are required to play more content)

Regarding **claim 11**, Donian discloses:

wherein selection of portions of content for playback is selectable by a user, the application controlling the controller to monitor content selection and to transmit, via the interface, indicia of content selection to the service on the remote network. ([0188] discloses sending an ID of content to a sever based off of a user selection)

Regarding **claim 12**, Donian discloses:

wherein the received advertisements are played back in between the content selected for playback. (see [0204] which discloses inter-splicing ads with content)

Claims 13-18 and 20 recite substantially the same limitations as claims 1-2, 4-8 and 10-12 above, and thus are rejected for similar reasons.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donian as applied to claim 1 above, and further in view of Official Notice.

Donian does not disclose that a wireless link is used to transmit information to the remote service.

The Examiner takes Official Notice of the fact that it was well known in the art at the time of the invention to include a wireless network connection in a computing device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Donian with the general concept of including a wireless interface in a computing device in order to make the system more portable.

6. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donian as applied to claims 1 and 13 above, and further in view of Blinn et al. (US 20050192907).

Donian does not disclose limiting the number of times a piece of content may be played.

The general concept of limiting the number of times a piece of content may be played is well known in the art as taught by Blinn. (See [0005])

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Donian with the general concept of limiting the number of times a piece of content may be played as taught by Blinn in order to allow the user even more flexibility in choosing the DRM methods used on purchased or accessed content.

Response to Arguments

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blaser discloses a playlist server sending a playlist mixed with ads to a media player. Cohen discloses a media player which wirelessly receives advertisements to place into playlists..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL E. KEEFER whose telephone number is

(571)270-1591. The examiner can normally be reached on Monday through Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 4/10/2009

/Dustin Nguyen/

Primary Examiner, Art Unit 2454